IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.30/2001
WITH
CROSS OBJECTION NO. 7/2001

1. The Land Acquisition Officer,
South Goa Sub-Division,
Quepem, Goa; and

2. The Executive Engineer,
Works Division XXV, P.W.D.
Gogol, Margao, Goa. ..... Appellants.

V/s.

1) Miss Maggie Lopes,

2) Maclino Lopes and

3) Fr. Killiano Lopes;

All resident of Dandeawaddo,
Chinchinim, Salcete, Groa. ..... Respondents.

Ms. W. Coutinho, Government Advocate for the appellants.

Mr. S. S. Kakodkar, Advocate for the respondents.

CORAM : R.M. LODHA, J.

DATE : 27TH OCTOBER, 2005.

ORAL JUDGMENT :

The State of Goa through the Land Acquisition Officer, South Goa, Quepem and the Executive Engineer, P.W.D. (WD XXV)

Gogol, Margao, Goa have preferred the appeal dissatisfied with the Judgment and Award dated 22.3.2000 passed by the IInd Additional District Judge, South Goa, Margao in Land Acquisition Case No.153/1992 pertaining to compensation for acquisition of 729 sq. metres of land from Survey No.420/9 (1 sq. metre), survey No.429/20 (293 sq. metres) and Survey No.433/9 (435 sq. metres) situated in the Village of Chinchinim, Taluka Salcete belonging to the respondents.

2. The respondents have filed cross objections claiming compensation for retaining wall to the extent of Rs.27,000/- that was denied by the Reference Court.

3. The Government of Goa issued Notification dated 23.5.1988 that was published in the Official Gazette on 18.8.1988 for acquisition of the aforementioned land along with other land for widening and improvement of the National Highway No.17. Upon conclusion of the acquisition proceedings, the Land Acquisition Officer offered market value of the acquired land at the rate of Rs.13/- per sq. metre. As the owners found the offer of the Land Acquisition Officer too law, they sought reference.

4. Before the Reference Court the claimant Maggie Lopes (AW.1) examined herself. She also examined Vikas Dessai (AW.2), Antonio Alemao (AW.3) and Rosa Coutinho (AW.4). The claimants

produced two sale deeds; Sale Deed dated 13.08.1985 along with the copy of the plan (Exhibit AW.4/A) and the Sale Deed dated 28.09.1990 along with the copy of the plan (Exhibit AW.1/A). Two valuation reports were also exhibited as AW.1/B and AW.2/A.

5. In rebuttal, no evidence was led by the present appellants.

6. The Reference Court took the Sale Deed dated 13.08.1985 as the index for the market value. The Sale Deed dated 13.08.85 pertained to the plot of land situated at Chinchinim. That plot was sold at the rate of Rs.175/- per sq. metre. The Reference Court found that the user of the land was restricted and, accordingly, reduced the price mentioned in the sale deed dated 13.08.05 by 50 % and then considered the rise in the price of land at the rate of 10 % per annum and fixed the market value of the acquired land at Rs.100/- per sq. metre.

7. The learned Government Advocate and the learned Advocate for the claimant did not dispute that the subject-matter of this first appeal is identical to the First Appeal No.32/1999 that was disposed of by me on 6th October, 2005. They admitted that in view of my Judgment dated 6th October, 2005, the elaborate consideration of the evidence in this first appeal is not required. They agreed that the nature of evidence in First Appeal No.32/1999 and in the present case

is almost identical. The land in the present case and the land that was subject-matter of First Appeal No.32/1999 have been acquired for the same public purpose. In First Appeal No.32/1999, I held that the market value fixed at the rate of Rs.100/- per sq. metre did not call for any interference. I am informed by the learned Government Advocate and the learned Advocate for the claimant that in First Appeal No.2/2001 wherein the acquired land was situated similar to the acquired land, the market value @ Rs.100/- per sq. metre has also been upheld based on the Judgment in First Appeal No. 32/1999. For the reasons that were indicated by me in First Appeal No.32/1999 and First Appeal No.2/2001, the market value fixed in the present case at the rate of Rs.100/- per sq. metre for the acquired land deserves to be upheld and I hold so.

8. Now I advert to the cross objections of the claimants. Though in the cross objections, enhancement was claimed under various heads, the learned Counsel for the claimants confined the cross objections to ground IV. Ground IV reads thus :

> " The learned District Judge based on the Report of valuation of the expert and also on the corroborative evidence of the Respondents and the witnesses, ought to have granted Rs.27,000/- in all towards the retaining wall for the said acquired retaining wall. By not granting compensation

> towards the said retaining wall, the Learned District Judge has committed an error. No reasons have been recorded to reject the claim of the retaining wall for the said amount of compensation."

9. The learned Counsel for the claimant submitted that though before the Reference Court, the Advocate for the claimants conceded that there was no cogent and conclusive evidence with regard to the compensation for the retaining wall, the said concession culminated into an award and the cross objections being in the nature of appeal, it is open to the claimant to agitate the issue relating to the compensation for the retaining wall even if the concession was made in that regard before the Reference Court. He relied upon the Judgment of the Supreme Court in the case of **State of Maharashtra v. Ramdas Shrinivas Nayak and another,** (1982) 2 SCC 463 in support of his contention that the concession does not preclude the Appeal Court from dealing with the question on merits.

10. In the case of **Ramdas Shrinivas Nayak (supra),** the Supreme Court ruled thus :

> " When we drew attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the

arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements as the Bar or by affidavit and other evidence. If the judges saying their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a

> statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the Judgment.

11. I find it difficult to appreciate how the aforesaid Judgment of the Supreme in the case of **Ramdas Shrinivas Nayak (supra)** is applicable to the facts of the present case. The leaned Counsel for the claimants did not dispute, and rightly, that the statement recorded in paragraph 11 of the impugned judgment states the correct factual aspect that the Advocate for the claimants conceded that there was no cogent and conclusive evidence to prove the compensation for retaining wall. The concession recorded in paragraph 11 of the impugned judgment, by no stretch of imagination, can be said to be under wrong appreciation of law. In paragraph 11 of the impugned judgment and award the following statement is recorded, “Ld. Advocate Shri Shinkre has conceded that there is no cogent and conclusive evidence to prove issue no.2 and 3. This being the case the issue no.2 and 3 are answered in the negative.” Issues No.2 and 3 inter

alia related to retaining wall. By making such concession, obviously, the claimant did not press the claim of retention wall any further. The concession made by an advocate on facts binds the party he represents and such party cannot be permitted to resile from that concession. The submission of the learned Advocate for the claimants that concession made by the Advocate for the claimants culminated into the award and its correctness can be challenged is noted to be rejected.

12. Even, otherwise, I find that there was no mistake on the part of the Advocate in making concession before the Reference Court that there was no cogent and conclusive evidence to prove the claim of compensation for retaining wall. The claimant in her cross examination admitted that she did not remember as to when the retention wall was constructed. According to her, it was constructed by her ancestors. She also admitted that retention wall formed part and parcel of the property. That being so, she has already been awarded compensation for the compulsory acquisition of the land that included the retaining wall that was part and parcel of the property. Nothing further could have been claimed with regard to retention wall and in that background, the Advocate for the claimants cannot be said to have erred in making the concession that there was no cogent and conclusive evidence to claim the compensation for the retention wall. The submissions of the learned Counsel for the claimants in support of

the cross objections do not deserve to be accepted and are rejected being of no merit.

13. Resultantly, the first appeal as well as the cross objection are liable to be rejected and are, accordingly, rejected. No order as to costs.

R.M. LODHA, J.

ssm.